S T A T E O F N E W Y O R K

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I N A S S E M B L Y

January 29, 2010

Introduced by M. of A. FIELDS, ALESSI, THIELE, SWEENEY -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Ways and Means

AN ACT to repeal article 23 of the tax law, relating to the metropolitan commuter transportation mobility tax; to amend the tax law, administrative code of the city of New York, education law and the highway law, in relation to making technical corrections related thereto; and to repeal provisions of the tax law, administrative code of the city of New York, education law, public authorities law and the state finance law, relating to the metropolitan commuter transportation mobility tax

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 23 of the tax law is REPEALED.

S 2. Paragraphs 1 and 2 of subdivision (j) of section 14 of the tax law, as amended by section 10 of part CC of chapter 85 of the laws of 2002, are amended to read as follows:

(1) A new business shall include any corporation, except a corporation which is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under section one hundred eighty-three, one hundred eighty-four[,] OR one hundred eighty-five [or one hundred eighty-six] of article nine; article nine-A, article thirty-two or thirty-three of this chapter; [article twenty-three of this chapter] or which would have been subject to tax under [such] article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter.

(2) For purposes of article twenty-two of this chapter, an individual who is either a sole proprietor or a member of a partnership shall qualify as an owner of a new business unless the business of which the individual is an owner is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under section one hundred eighty-three, one hundred eighty-four[,] OR one hundred eighty-five [or one hundred eighty-six] of article nine; article nine-A,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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thirty-two or thirty-three of this chapter; [article twenty-three of this chapter] or which would have been subject to tax under [such] article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two.

S 3. Clause (i) of subparagraph 5 of paragraph (a) of subdivision 9 of section 208 of the tax law, as amended by section 2 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(i) any refund or credit of a tax imposed under this article[, article twenty-three,] or article thirty-two of this chapter, for which tax no exclusion or deduction was allowed in determining the taxpayer's entire net income under this article[, article twenty-three,] or article thirty-two of this chapter for any prior year,

S 4. Subparagraph 20 of paragraph (b) of subdivision 9 of section 208 of the tax law is REPEALED.

S 5. Paragraph (c) of subdivision 1-c of section 210 of the tax law, as amended by chapter 1043 of the laws of 1981, is amended to read as follows:

(c) is not a corporation which is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under this article; section one hundred eighty-three, one hundred eighty-four[,] OR one hundred eighty-five [or one hundred eighty-six] of article nine; article thirty-two or thirty-three of this chapter; [article twenty-three of this chapter] or which would have been subject to tax under [such] article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter, and

S 6. Subparagraph 2 of paragraph j of subdivision 12 of section 210 of the tax law, as amended by chapter 1043 of the laws of 1981, is amended to read as follows:

(2) is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under this article; section one hundred eighty-three, one hundred eighty-four[,] OR one hundred eighty-five [or one hundred eighty-six] of article nine; article thirty-two or thirty-three of this chapter; [article twenty-three of this chapter] or which would have been subject to tax under [such] article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter whereby the intent and purpose of this paragraph and paragraph (e) of this subdivision with respect to refunding of credit to new business would be evaded; or

S 7. Paragraph 2 of subdivision (a) of section 292 of the tax law, as amended by section 4 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(2) There shall be subtracted from federal unrelated business taxable income the amount of any refund or credit for overpayment of a tax imposed under this article [or article twenty-three of this chapter].

S 8. Paragraph 8 of subdivision (a) of section 292 of the tax law is REPEALED.

S 9. Subparagraph (A) of paragraph 10 of subsection (a) of section 606 of the tax law, as amended by section 3 of part CC of chapter 85 of the laws of 2002, is amended to read as follows:

(A) the business of which the individual is an owner is substantially similar in operation and in ownership to a business entity taxable, or

previously taxable, under section one hundred eighty-three, one hundred eighty-four[,] OR one hundred eighty-five [or one hundred eighty-six] of article nine; article nine-A, thirty-two or thirty-three of this chapter; [article twenty-three of this chapter] or which would have been subject to tax under [such] article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter whereby the intent and purpose of this paragraph and paragraph five of this subsection with respect to refunding of credit to new business would be evaded; or

S 10. Paragraph 39 of subsection (b) of section 612 of the tax law is REPEALED.

S 11. Paragraph 7 of subsection (c) of section 612 of the tax law, as amended by section 7 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(7) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, [and any taxes imposed by article twenty-three of this chapter,] to the extent properly included in gross income for federal income tax purposes.

S 12. Clause (ii) and subclause 2 of clause (v) of subparagraph (B) of paragraph 1 of subsection (o) of section 612 of the tax law, clause (ii) as amended by chapter 28 of the laws of 1987 and subclause 2 as amended by chapter 1043 of the laws of 1981, are amended to read as follows:

(ii) is, at the date of adoption of such plan, subject to taxation (whether or not any amount is owing) under section one hundred eighty-three[,] OR one hundred eighty-four [or one hundred eighty-six] of article nine of this chapter, or under article [nine-a] NINE-A of this chapter [or article twenty-three of this chapter], or would have been subject to tax under article twenty-three (as such article was in effect on January first, nineteen hundred eighty) if such article were still in effect, and the first taxable period for which such new business became subject to such taxation commenced on or after July first, nineteen hundred eighty-one and before January first, nineteen hundred eighty-eight, and such first taxable period includes the date of adoption of such plan; if not so subject to taxation, the new business must be subject to taxation under such sections or articles for the first time within one year from the date of adoption of such plan, and

(2) A new business does not include (i) any new business of which twenty-five percent or more of the number of shares of stock that entitle the holders thereof to vote for the election of directors or trustees is owned, directly or indirectly, by a taxpayer subject to tax under section one hundred eighty-three, one hundred eighty-four[,] OR one hundred eighty-five [or one hundred eighty-six] of article nine of this chapter, or under article nine-A, thirty-two or thirty-three of this chapter or (ii) any new business substantially similar in operation and in ownership, directly or indirectly, to a business entity (or entities) taxable, or previously taxable, under such sections, such articles, [article twenty-three] or which would have been subject to tax under article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two whereby the intent and purpose of this subsection would be evaded.

S 13. Paragraph 3 of subsection (p) of section 612 of the tax law, as amended by chapter 28 of the laws of 1987, is amended to read as follows:

(3) is not substantially similar in operation or ownership, directly or indirectly, to a business entity (or entities) taxable, or previously taxable, under such sections, such articles, [article twenty-three] or which would have been subject to tax under article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two whereby the intent and purpose of this subsection would be evaded,

S 14. Paragraph 8 of subsection (c) of section 615 of the tax law is REPEALED.

S 15. Subdivision 4 of section 618 of the tax law, as amended by section 9 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(4) There shall be added or subtracted (as the case may be) the modifications described in paragraphs (6), (10), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (29), AND (38) [and (39)] of subsection (b) and in paragraphs (11), (13), (15), (19), (20), (21), (22), (23), (24), (25), (26) and (28) of subsection (c) of section six hundred twelve of this part.

S 16. Subdivision 4 of section 618 of the tax law, as separately amended by section 5 of part HH-1 of chapter 57 of the laws of 2008 and section 9 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(4) There shall be added or subtracted (as the case may be) the modifications described in paragraphs (6), (10), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), [(28),] (29), AND (38) [and (39)] of subsection (b) and in paragraphs (11), (13), (15), (19), (20), (21), (22), (23), (24), (25), (26) and (28) of subsection (c) of section six hundred twelve of this part.

S 17. Subsection (a) of section 686 of the tax law, as amended by section 10 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(a) General.-- The commissioner of taxation and finance, within the applicable period of limitations, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed by this chapter[, including taxes imposed under article twenty-three of this chapter,] on the person who made the overpayment, against any liability in respect of any tax imposed pursuant to the authority of this chapter or any other law on such person if such tax is administered by the commissioner of taxation and finance and, as provided in sections one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f and one hundred seventy-one-l of this chapter, against past-due support, a past-due legally enforceable debt, a city of New York tax warrant judgment debt, and against the amount of a default in repayment of a guaranteed student, state university or city university loan. The balance shall be refunded by the comptroller out of the proceeds of the tax retained by him for such general purpose. Any refund under this section shall be made only upon the filing of a return and upon a certificate of the commissioner approved by the comptroller. The comptroller, as a condition precedent to the approval of such a certificate, may examine into the facts as disclosed by the return of the person who made the overpayment and other information and data available in the files of the commissioner.

S 18. Section 1311 of the tax law, as amended by chapter 682 of the laws of 1976, is amended to read as follows:

S 1311. Enforcement with other taxes. (a) If there is assessed a tax under a city income tax imposed pursuant to the authority of this article and there is also assessed a tax or taxes against the same taxpayer pursuant to article twenty-two [or articles twenty-two and twenty-three] of this chapter or under a local law enacted pursuant to the authority of FORMER article two-E of the general city law and payment of a single amount is required under the provisions of this article, such payment shall be deemed to have been made with respect to the taxes so assessed in proportion to the amounts of such taxes due, including tax, penalties, interest and additions to tax.

(b) If the state tax commission takes action under such article twenty-two [or articles twenty-two and twenty-three] or under a local law enacted pursuant to the authority of FORMER article two-E of the general city law with respect to the enforcement and collection of the tax or taxes assessed under such articles the state tax commission shall, wherever possible, accompany such action with a similar action under similar enforcement and collection provisions of such city income tax.

(c) Any moneys collected as a result of such joint action shall be deemed to have been collected in proportion to the amounts due, including tax, penalties, interest and additions to tax, under article twenty-two [or articles twenty-two and twenty-three] of this chapter and such city income tax.

(d) Whenever the state tax commission takes any action with respect to a deficiency of income tax under article twenty-two [or articles twenty-two and twenty-three] of this chapter or under a local law enacted pursuant to the authority of FORMER article two-E of the general city law, other than the action set forth in subdivision (a) of this section, it may in its discretion accompany such action with a similar action under such city income tax.

S 19. Paragraph 15 of subsection (b) of section 1453 of the tax law is REPEALED.

S 20. Subsection (d) of section 1453 of the tax law, as amended by section 13 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(d) Entire net income shall not include any refund or credit of a tax for which no exclusion or deduction was allowed in determining the taxpayer's entire net income under this article or [articles] ARTICLE nine-A [or twenty-three] of this chapter for any prior year.

S 21. Subparagraph (B) of paragraph 8 of subsection (i) of section 1456 of the tax law, as added by section 27 of part A of chapter 56 of the laws of 1998, is amended to read as follows:

(B) is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under this article; section one hundred eighty-three, one hundred eighty-four[,] OR one hundred eighty-five [or one hundred eighty-six] of article nine; article nine-A or article thirty-three of this chapter; [article twenty-three of this chapter] or which would have been subject to tax under [such] article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter whereby the intent and purpose of this paragraph and paragraph five of this subsection with respect to refunding of credit to new business would be evaded; or

S 22. Subparagraph (C) of paragraph 1 of subdivision (b) of section 1503 of the tax law, as amended by section 14 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(C) any refund or credit of a tax imposed under this article or section one hundred eighty-seven, [or article twenty-three of this chapter] heretofore in effect to the extent properly included as income for federal income tax purposes, for which no exclusion or deduction was allowed in determining the taxpayer's entire net income under this article for any prior year;

S 23. Subparagraph (V) of paragraph 2 of subdivision (b) of section 1503 of the tax law is REPEALED.

S 24. Subparagraph (B) of paragraph 7 of subdivision (q) of section 1511 of the tax law, as added by section 1 of part L of chapter 63 of the laws of 2000, is amended to read as follows:

(B) is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under this article; section one hundred eighty-three, one hundred eighty-four[,] OR one hundred [eight-five or one hundred eighty-six] EIGHTY-FIVE of article nine; article nine-A or article thirty-two of this chapter; [article twenty-three of this chapter] or which would have been subject to tax under [such] article twenty-three (as such article was in effect [of] ON January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter whereby the intent and purpose of this paragraph and paragraph four of this subdivision with respect to refunding of credit to new business would be evaded; or

S 25. Subparagraph 5 of paragraph (a) of subdivision 8 of section 11-602 of the administrative code of the city of New York, as amended by section 16 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(5) any refund or credit of a tax imposed under this chapter, or imposed by article nine, nine-A, [twenty-three,] or thirty-two of the tax law, for which tax no exclusion or deduction was allowed in determining the taxpayer's entire net income under this subchapter or subchapter three of this chapter for any prior year;

S 26. Subparagraph 19 of paragraph (b) of subdivision 8 of section 11-602 of the administrative code of the city of New York is REPEALED.

S 27. Paragraph 16 of subdivision b of section 11-641 of the administrative code of the city of New York is REPEALED.

S 28. Subdivision (d) of section 11-641 of the administrative code of the city of New York, as amended by section 19 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(d) Entire net income shall not include any refund or credit of a tax for which no exclusion or deduction was allowed in determining the taxpayer's entire net income under this subchapter or subchapter two of this chapter[, or imposed by article twenty-three of the tax law for any prior year].

S 29. Paragraph 35 of subdivision (b) of section 11-1712 of the administrative code of the city of New York is REPEALED.

S 30. Paragraph 7 of subdivision (c) of section 11-1712 of the administrative code of the city of New York, as amended by section 21 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(7) The amount of any refund or credit for overpayment of income taxes imposed by this city, OR any other taxing jurisdiction, [or any taxes imposed by article twenty-three of the tax law] to the extent properly included in gross income for federal income tax purposes.

S 31. Paragraph 3 of subdivision (p) of section 11-1712 of the administrative code of the city of New York, as amended by chapter 333 of the laws of 1987, is amended to read as follows:

(3) is not substantially similar in operation or ownership, directly or indirectly, to a business entity (or entities) taxable, or previously taxable, under such sections, such articles, [article twenty-three of the tax law] or which would have been subject to tax under article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includible under article twenty-two of the tax law whereby the intent and purpose of this subdivision would be evaded,

S 32. Subdivision 4 of section 11-1718 of the administrative code of the city of New York, as amended by section 22 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(4) There shall be added or subtracted (as the case may be) the modifications described in paragraphs six, ten, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-nine AND, thirty-four [and thirty-five] of subdivision (b) and in paragraphs eleven, thirteen, fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six and twenty-eight of subdivision (c) of section 11-1712 of this subchapter.

S 33. Subdivision 4 of section 11-1718 of the administrative code of the city of New York, as separately amended by section 12 of part HH-1 of chapter 57 of the laws of 2008 and section 22 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

(4) There shall be added or subtracted (as the case may be) the modifications described in paragraphs six, ten, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, [twenty-eight,] twenty-nine AND, thirty-four [and thirty-five] of subdivision (b) and in paragraphs eleven, thirteen, fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six and twenty-eight of subdivision (c) of section 11-1712 of this subchapter.

S 34. Subparagraphs 17 and 18 of paragraph t of subdivision 1 of section 3602 of the education law, as amended by section 2 of part D of chapter 25 of the laws of 2009, are amended to read as follows:

(17) in any year in which expenditures are made to the New York state teachers' retirement system or the New York state and local employees' retirement system for both the prior school year and the current school year, any expenditures made to such retirement systems and recorded in the school year prior to the school year in which such obligations are paid[; and (18) any payments to the commissioner of taxation and finance pursuant to article twenty-three of the tax law].

S 35. Section 3609-g of the education law is REPEALED.

S 36. Paragraph (e) of subdivision 7 of section 38 of the highway law, as amended by chapter 196 of the laws of 1981 and as relettered by chapter 153 of the laws of 1984, is amended to read as follows:

(e) No such certificate approving or authorizing the first partial payment or any final payment to a foreign contractor shall be made unless such contractor shall furnish satisfactory proof that all taxes due the state tax commission by such contractor, under the provisions of or pursuant to a law enacted pursuant to the authority of article nine, nine-a, twelve-a, [sixteen, sixteen-a,] twenty-one, twenty-two, [twenty-three,] twenty-eight, twenty-nine or thirty of the tax law [or article two-E of the general city law] have been paid. The certificate of the state tax commission to the effect that all such taxes have been paid shall be, for purpose of this paragraph, conclusive proof of the payment of such taxes. The term "foreign contractor" as used in this

subdivision means, in the case of an individual, a person who is not a resident of this state, in the case of a partnership, one having one or more partners not a resident of this state, and in the case of a corporation, one not organized under the laws of this state.

S 37. Section 1270-h of the public authorities law is REPEALED.

S 38. Section 92-ff of the state finance law is REPEALED.

S 39. This act shall take effect immediately; provided that the amendments to subdivision 4 of section 618 of the tax law made by section fifteen of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 8 of chapter 782 of the laws of 1988, as amended, when upon such date the provisions of section sixteen of this act shall take effect; and provided further that the amendments to subdivision 4 of section 11-1718 of the administrative code of the city of New York made by section thirty-two of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 8 of chapter 782 of the laws of 1988, as amended, when upon such date the provisions of section thirty-three of this act shall take effect.